LETTER.

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The Arkansas Board of Apportionment
The Honorable Mike Huckabee
The Honorable Sharon Priest
The Honorable Mark Pryor

I am Steve Higginbothom from Marianna. I was a candidate for State Senate District 22 this past May in the Democratic Primary. District 22 consist of parts of Phillips, Lee, St. Francis and Crittenden counties. The district is one of the best example of gerrymandering created by the Jeffers vs Clinton case. However since 1991 the courts have consistently ruled against this decision ; so there is no real legal argument to continue drawing districts in a gerrymandering manner.

The four largest communities in District 22 (Helena, West Helena, Forrest City, and West Memphis) are all divided by neighboring senate districts for the sole purpose to create a separation of blacks and whites. The last thing this area of the Delta needs is a senate district drawn to create racial division among our communities.

We have fought the battles of racial discrimination and segregation who's wounds are still felt. We do not need to go back in time to create division and polarization of the races.

District 22 has an African American State Senator, two African American state representatives, nine African American mayors and most city councils and quorum courts are equally divided among blacks and whites. This shows in a general election of the population in a non gerrymandered setting equal opportunity for qualified candidates. No matter how you redraw this senate district you will still have a majority African American population in the delta.

We need to elect officials based on qualifications and issues ; NOT on the color of their skin. This is presently not the case in District 22 with an 80% black and 20% white population within the present district.

We need a district that does not divide our communities, neighborhoods, and most of all our people.

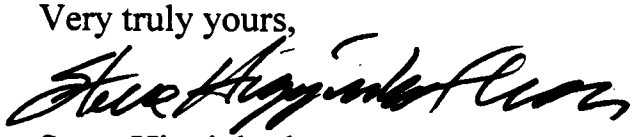
Governor Huckabee, Secretary of State Priest, and Attorney General Pryor : I ask of you to draw a senate district with logical and geographic boundaries with common associations and to put common sense back in our senate district.

We do not need to continue with an island district as is presently in Phillips County within our district which was drawn to confuse and separate our citizens. Neither does any community need to be divided. While campaigning last spring I realized very few citizens in our four largest communities even knew who their state senator was due to the irregular lines drawn within their neighborhoods.

It is your responsibility to insure everyone both black and white equal and fair representation in compliance with the laws of our state and nation.

Thank you for being here today to hear the concerns of our area.

Very truly yours,



Steve Higginbothom

MEMORANDUM

MEMORANDUM

TO: Roger Clegg
Center for Equal Opportunity

FROM: Daniel E. Troy
Partner, Wiley, Rein & Fielding
Associate Scholar, American Enterprise Institute

DATE: July 12, 2000

RE: Use of Race in 2000 Redistricting

You have asked for my views about the legality and prudence of using race to draw district lines during the upcoming rounds of redistricting. In short, I believe that the Supreme Court has made clear its view that "the use of racial classifications is corruptive of the whole legal order democratic elections seek to preserve." *Rice v. Cayetano*, 120 S. Ct. 1044, 1046 (2000). In cases decided during the last decade, the Court has held that section 5 of the Voting Rights Act "prevents nothing but backsliding," *Reno v. Bossier Parish School Board*, 120 S. Ct. 866, 875 (2000); that section 2 "does not require a State to create, on predominantly racial lines, a district that is not 'reasonably compact,'" *Bush v. Vera*, 571 U.S. 952, 979 (1996) (citation omitted); and that bizarre, non-compact districts drawn along racial lines are unconstitutional, *Miller v. Georgia*, 515 U.S. 900 (1995). Accordingly, I conclude that the approach to redistricting most likely to withstand a constitutional or Voting Rights Act challenge would not use race as a consideration in redistricting until after the process has been completed. At that point, jurisdictions covered by section 5 should check the plan resulting from their redistricting process to ensure that there has been no prohibited "backsliding."

First, for section 5 jurisdictions, *Bossier Parish* has affirmed the limited nature of the preclearance requirement. So long as a jurisdiction can show that the proposed change (such as the new redistricting plan) does not have the purpose and effect of leading to a "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise," *Beer v. United States*, 425 U.S. 130, 141 (1976), *quoted in Bossier Parish*, 120 S.Ct. at 867, it must be precleared. *Bossier Parish* clarified that the word "purpose" in section 5 related to retrogression only. Accordingly, so long as the new plan does not have the purpose and effect of leaving minorities in a worse position than before, it will be precleared.

Ensuring that there is no retrogression necessarily involves looking at the racial make-up of the districts within a newly adopted redistricting plan. And it is theoretically possible to begin the redistricting process by holding constant any majority-minority districts and redistricting "around" those districts so to speak. For reasons discussed below, however, I believe that it is

more prudent to use race only to "check" the output of a process which is as race-neutral as possible.

In almost a half-dozen cases, the Supreme Court has established that race may not be "the predominant factor motivating the legislature's [redistricting] decision." *Miller v. Georgia*, 515 U.S. at 901.[1] This means that legitimate districting principles cannot be subordinated to race. Of course, just as it is impossible to ask legislators to ignore where highways are situated and which neighborhood is Catholic or Jewish, it is impossible for legislators to ignore race in the redistricting process entirely. The Supreme Court has recognized that race is ever-present. For this reason, though, relying or even referring to racial considerations overtly would raise suspicions and create a bad record that race is being employed as the predominant factor in line-drawing, and not just one of many factors.

The Supreme Court has also clarified that section 2 of the Voting Rights Act does not require a state to create majority-minority districts wherever it is theoretically possible to do so or wherever the percentage of representatives elected from minority-controlled districts is lower than the percentage of a state's minority population. Section 2 requires a majority-minority district to be drawn only if a minority group is sufficiently large and geographically compact, politically cohesive, and if there is evidence of white bloc voting against minorities. *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986). Recent years have confirmed how rare successful section 2 challenges are; in particular, evidence of white bloc voting is increasingly hard to come by.

Legislatures thus face a greater litigation risk from using race than by not using race to redistrict. Although nothing can prevent lawsuits (indeed, many states may face simultaneous challenges that they took race into account and that they did not do so enough) the experience in the Supreme Court during the last decade strongly suggests that states have more to fear in terms of liability from racial gerrymandering claims than from section 2 suits. Accordingly, states can reduce this risk by refusing to use racial considerations in the redistricting process. Most notably, the computer programs employed to redistrict should use political and other demographic data, but not racial data. *Bush v. Vera*, 571 U.S. 952. Indeed, it was precisely the omnipresence of racial data in the redistricting software which caused the Supreme Court to invalidate three congressional districts in *Bush v. Vera*, 517 U.S. 952.

Finally, states should eschew the use of race in redistricting to the extent possible because "[d]istinctions [based on ancestry are by their] nature odious to a free people whose institutions are founded upon the doctrine of equality." *Rice v. Cayetano*, 120 S. Ct. at 1057 (quotation marks and citation omitted).

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[1] Such decisions are subject to "strict scrutiny" by the Court. Although Justice O'Connor (at least) has taken pains to say that strict scrutiny is not "fatal in fact," strict scrutiny has, indeed, been fatal whenever it has been applied.